

SENATE NO. 782



RESERVING PUBLICLY ASSISTED AFFORDABLE HOUSING.

*Be it enacted by the Senate and House of Representatives in General Court assembled,
And by the authority of the same, as follows:*

SECTION 1. Whereas, the deferred operation of this act would tend to defeat its purposes, which include, to authorize municipalities to prevent the loss of publicly assisted housing by providing them with the opportunity to preserve the affordability of such housing, to protect tenants of these units from displacement due to the loss of the use restrictions, and to address the overall lack of housing affordable to low income persons in Massachusetts, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

SECTION 2. The General Laws, as appearing in the 2004 Official Edition, are hereby amended by inserting after chapter 40S the following chapter:-

CHAPTER 40T

PRESERVATION OF PUBLICLY ASSISTED HOUSING.

SECTION 1. Definitions

As used in this chapter, the following words shall have the following meanings:-

“Affected municipality”, any city or town in which publicly assisted housing or a publicly assisted housing development is located.

“Affordability restrictions”, limits on rents that owners may charge for occupancy of a rental unit in publicly assisted housing and limits on tenant income for persons or families seeking to qualify for admission to publicly assisted housing.

“Applicant”, a prospective low-income tenant seeking admission to publicly assisted housing.

“Department”, the Massachusetts department of housing and community development or any successor agency.

“Extremely low-income”, having a household income of no more than 30 percent of the area median income, adjusted for household size, as periodically determined by the United States Department of Housing and Urban Development.

“Government program”, a program or combination of programs described in the definition of publicly assisted housing.

“Low Income”, having a household income of no more than 80 percent of the area median income, adjusted for household size, as periodically determined by the United States Department of Housing and Urban Development.

“Owner”, a person, firm, partnership, corporation, trust, organization or other entity, and its successors or assigns, that holds title to a publicly assisted housing development.

“Preserve affordability,” take all reasonable, diligent, and good faith actions necessary (i) to retain existing subsidies to the greatest extent possible , and to obtain additional subsidies, for the purpose of maintaining housing for the longest feasible period of time as housing

36 affordable to low income households, especially very low and extremely low-income
37 households ; and (ii) to the greatest extent possible in light of available subsidies, to
38 achieve tenant payments of no more than 30 percent of household income for rent and utilities.
39 Preserving affordability shall include entering into a recorded land use agreement, affordable
40 housing restriction, or regulatory agreement required to effectuate the purposes of this chapter.

41 “Publicly assisted housing” or “publicly assisted housing development”, housing that
42 receives government assistance under any of the following programs:-

- 43 (1) Section 8 of the United States Housing Act of 1937, as amended, 42 U.S.C. Section
44 1437f as it applies to new construction, substantial rehabilitation, moderate
45 rehabilitation, property disposition and loan management set-aside programs, or any
46 other program providing project-based rental assistance;
- 47 (2) Section 42 of the Internal Revenue Code, as amended, 26 U.S.C. Section 42, the federal
48 Low-Income Housing Tax Credit Program;
- 49 (3) Section 101 of the Housing and Urban Development Act of 1965, as amended, 12
50 U.S.C. Section 1701s as it applies to programs for rent supplement assistance
51 thereunder;
- 52 (4) Section 202 of the Housing Act of 1959, as amended, 12 U.S.C. Section 1701q;
- 53 (5) Section 221(d)(3) of the National Housing Act of 1934, as amended, 12 U.S.C. Section
54 1715l (d)(3) or (5), the below market interest rate program;
- 55 (6) Section 221(d)(4) of the National Housing Act, as amended, 12 U.S.C. Section 1715l
56 (d)(4), to the extent the project’s rents are regulated pursuant to a government
57 agreement;
- 58 (7) Section 236 of the National Housing Act, as amended, 12 U.S.C. Section 1715z-l;

- 59 (8) Section 515 of the Housing Act of 1949, as amended, 42 U.S.C. Section 1485;
- 60 (9) Section 521 of the Housing Act of 1949, as amended, 42 U.S.C. Section 1490a;
- 61 (10) The federal Urban Development Action Grant, “UDAG”, as amended, 42 U.S.C.
- 62 Section 5318, to the extent the project’s rents are regulated pursuant to a government
- 63 agreement;
- 64 (11) The federal Housing Development Action Grant, “HODAG”, as amended, 42 U.S.C.
- 65 Section 1437o, to the extent the project’s rents are regulated pursuant to a government
- 66 agreement;
- 67 (12) Chapter 121A of the General Laws, to the extent the project’s affordability of dwelling
- 68 units is regulated;
- 69 (13) Section 13A of Chapter 708 of the Acts of 1966;
- 70 (14) The Massachusetts Rental Voucher Program, so called (as described in line item 7004-
- 71 9024 from year to year of the acts making annual appropriations for the Commonwealth),
- 72 as it applies to project-based rental assistance;
- 73 (15) The state Low Income Housing Tax Credit program, Section 6I of Chapter 62 of the
- 74 General Laws; or
- 75 (16) The State Housing Assistance for Rental Production, “SHARP,” Chapter 574 of the Acts
- 76 of 1983.
- 77 “Subsidies”, public financial assistance, including but not limited to grants, loans, rental
- 78 assistance, tax credits, tax abatements, mortgage financing, mortgage insurance, assistance
- 79 pursuant to any government program, or any other form of assistance, intended to make housing
- 80 affordable to low income households, especially very low and extremely low households,

81 “Tenant”, a tenant, subtenant, lessee, sub-lessee or other person entitled to possession,
82 occupancy or benefits of a rental unit within the publicly assisted housing.

83 “Tenant Organization,” an organization established by the tenants of a publicly assisted
84 housing development for the purpose of addressing issues related to their living environment
85 and which meets regularly, operates democratically, is representative of all residents in the
86 development, and is completely independent of owners, management, and their representatives.

87 “Termination”, any one or more of the following conditions that would have the effect
88 of removing any affordability restrictions:-

- 89 (1) non renewal of a government program contract;
- 90 (2) termination of a government program contract;
- 91 (3) non renewal of a government program mortgage contract;
- 92 (4) termination of a government program mortgage contract;
- 93 (5) termination of an affordability restriction under a government program;
- 94 (6) payment in full of a government program mortgage;
- 95 (7) prepayment of a government program mortgage or contract. Prepayment shall mean the
96 payment in full or refinancing of the governmentally insured or held mortgage
97 indebtedness prior to its original maturity date, or the voluntary cancellation of mortgage
98 insurance, on a publicly assisted housing development, or payment in full on a
99 government contract, that would have the effect of removing the affordability
100 restrictions applicable to the publicly assisted housing development under the programs
101 described thereunder.
- 102 (8) expiration of an affordability restriction under a government program;

103 (9) any action that may result in the full or partial termination of a government program's
104 regulatory or financial assistance agreement; or

105 (10) any action that may result in the full or partial termination of a government program's
106 affordability restrictions.

107 "Very low-income", having a household income of no more than 50 percent of the area
108 median income, adjusted for household size, as periodically determined by the United States
109 Department of Housing and Urban Development.

110 SECTION 2. Notices.

111 (a) The department shall give written notice to (i) all tenants and any tenant organization of
112 the publicly assisted housing, (ii) to the mayor or board of selectmen, the local elected
113 legislative body, and the local housing authority of any affected municipality, and (iii) to
114 the Community Economic Development Assistance Corporation, not less than 24 months
115 before the termination of any affordability restrictions of publicly assisted housing
116 covered by this chapter, notifying them that the affordability restrictions may terminate.

117 (b) Not less than 12 months before the completion of a termination, the owner of such housing
118 shall give (i) all tenants and any tenant organization of the publicly assisted housing, (ii)
119 the mayor or board of selectmen, the local elected legislative body, and the local housing
120 authority of any affected municipality, (iii) the Community Economic Development
121 Assistance Corporation, and (iv) the department, a notice of intent to complete
122 termination. Every such required notice shall include:- (1) the address of any publicly
123 assisted housing, characteristics of the property including the number of units, and the
124 names and addresses of the owners; (2) the date on which the owner intends to complete
125 termination; (3) a detailed list of any and all affordability restrictions applicable to the

housing; and (4) a statement that the affected municipality has the right to purchase the housing pursuant to Section 3.

SECTION 3. Right to Purchase

(a) Within 30 days after the owner has sent a notice pursuant to Section 2 (b), the owner shall, before completing termination, provide to the affected municipality or its selected designee, a bona fide offer for sale of the property which shall contain the essential terms of the sale, including at a minimum, the following:-

(1) the sales price; (2) the terms of seller financing, if any, including the amount, the interest rate, and amortization rate thereof; (3) the terms of assumable financing, if any, including the amount, the interest rate, and the amortization rate thereof; (4) proposed improvements, if any, to the property to be made by the owner in connection with the sale; and (5) provision that allows physical access to the property so that representatives of the affected municipality or its selected designee may conduct an inspection of the premises.

(b) Notwithstanding any provision of law to the contrary, within 60 days after the date of the owner's notice pursuant to Section 2 (b), the affected municipality may select a designee to act for and on behalf of the affected municipality and shall notify the owner that it has chosen a designee or that the affected municipality will act without a designee. The affected municipality may choose to select as a designee a nonprofit corporation, local or regional housing authority, or private purchaser. The municipality shall enter into a written agreement with such designee providing that the designee and any of its successors or assigns agrees to preserve affordability of the publicly assisted housing. The affected municipality, the department, and one or more tenants of the publicly assisted

housing or applicants shall have the right to bring an action for specific performance or other injunctive relief for enforcement of the agreement, and the agreement must contain provisions to this effect along with such other remedies for breach as the affected municipality and the nonprofit corporation, local or regional housing authority, or private purchaser may agree. Once such an agreement is entered into, the nonprofit corporation, local or regional housing authority or private purchaser shall assume all rights and responsibilities attributed to the affected municipality under this chapter. An affected municipality purchasing publicly assisted housing or a publicly assisted housing development without choosing a designee under this chapter shall maintain the development in a manner that shall preserve affordability. Within 30 days of sending the owner notice under this subsection, the municipality shall give the affected tenants a written notice regarding its plans and shall meet with the affected tenants at least once to discuss its plans.

(c) The affected municipality or its designee, shall notify the owner in writing, within 60 days after the receipt of the bona fide offer of sale, of its intent to purchase the assisted housing.

(d) The owner shall, after receiving a notice pursuant to subsection (c), comply with any reasonable request to make documents available to the affected municipality or its designee, during normal business hours at the owner's principal place of business within 15 days of receiving such a request, including but not limited to:- (1) any existing architectural plans and specifications of the development; (2) itemized lists of monthly operating expenses, capital expenditures in each of the 2 preceding calendar years and deferred maintenance costs; (3) the amount of project reserves; (4) utility consumption

172 rates; (5) copies of the last two annual financial and physical inspection reports filed with
173 federal, state or local agencies; (6) the most recent rent roll; (7) a list of tenants; (8) a list
174 of vacant units; and (9) a statement of the vacancy rate at the development for each of the
175 2 preceding calendar years.

176 (e) The municipality or its designee shall give written notice to the department and to other
177 persons and entities entitled to notice of termination under Section 2 of the actions it will
178 take in conjunction with the purchase which will preserve affordability of the publicly
179 assisted housing. In reviewing said notice, the department may require additional
180 documentation from the municipality or its proposed purchaser and may conduct such
181 hearings as it deems necessary before or after the purchase to determine whether the
182 actions of the municipality or its designee are sufficient to preserve affordability of the
183 publicly assisted housing. The department may require the municipality or its designee to
184 take such additional actions as it determines are necessary to preserve affordability of the
185 publicly assisted housing before or after the purchase.

186 (f) The municipality or its designee shall, within 90 days after it notifies the owner of its
187 intent to purchase, provide the owner with a bona fide offer to purchase evidenced by a
188 purchase and sale contract reflecting a sales price and terms agreed to by the parties or the
189 sales price and terms determined pursuant to subsection (g) of this section and an earnest
190 money deposit equal to 3 percent of the sales price in the bona fide offer to purchase, or
191 500,000 dollars, whichever is less. Such an earnest money deposit shall be held by an
192 escrow agent, who is mutually acceptable to the owner and the municipality or its
193 designee. This earnest money deposit shall be non-refundable upon execution of the

194 purchase and sale contract by both parties, except for non-performance by the seller of the
195 terms of the contract.

196 (g) If the parties are unable to agree to a sales price within the first 60 days of the 90 day
197 period specified in subsection (f), the sale price of the publicly assisted housing shall be
198 based upon its fair market value as determined by 2 independent appraisers qualified to
199 perform multi-family housing appraisals. The fair market value shall be based on the
200 highest and best use, but subject to any existing affordability restrictions that could not be
201 extinguished by the unilateral action of the owner. One appraiser shall be selected and
202 paid by the owner and the other shall be selected and paid by the municipality or its
203 designee. If the appraisers fail to agree upon a fair market value, the owner and the
204 municipality or its designee shall either jointly select and pay a third appraiser whose
205 appraisal shall be binding, or take an average of the 2 appraisals. All appraisers shall be
206 certified Members of Appraisal Institute. The determination of the sales price pursuant to
207 this subsection shall be completed within the 90 day period specified in subsection (f) of
208 this section.

209 (h) The affected municipality or its designee shall agree to close on the sale within 90 days
210 from the date the parties sign the purchase and sale agreement.

211 (i) The time periods may be extended by mutual written agreement of the parties.

212 (j) If the affected municipality or its designee fails to provide notice to the owner pursuant to
213 subsections (b), (c), or (f) or fails to meet the requirements of subsections (g) or (h), the
214 owner is released from any and all requirements and obligations under this section.

215 (k) Any notice provided for in this chapter shall be deemed given when a written notice is
216 delivered in person or mailed by certified or registered mail, return receipt requested, to
217 the party to whom notice is given.

218 (l) During the 12 month notice period described in Section 2(b) of this chapter, the owner
219 shall take all actions necessary to retain in place the current subsidy contracts on the
220 affected publicly assisted housing.

221 (m) The Community Economic Development Assistance Corporation shall provide assistance
222 to affected municipalities or its designee concerning the possible purchase of publicly
223 assisted housing.

224 (n) For the purposes of this chapter, the affected municipality or its designee, shall not be
225 subject to the provisions of section 16 of chapter 30B of the General Laws.

226 SECTION 4. Exceptions.

227 The provisions of section 2 and section 3 of this chapter shall not apply to any publicly
228 assisted housing that is subject to any of the following actions:-

229 (a) a government taking by eminent domain; or

230 (b) a forced sale pursuant to a foreclosure.

231 The owners of any publicly assisted housing subject to any action in (a) or (b) of this section
232 shall give notice of the action to all tenants and any tenant organizations of the affected publicly
233 assisted housing, to the mayor or board of selectmen, the local elected legislative body, and the
234 local housing authority of any affected municipality, to the department, and to the Community
235 Economic Development Assistance Corporation at least 60 days before the action occurs.

236 SECTION 5. Exemptions.

237 The provisions of Section 3 of this chapter shall not apply to an owner of publicly
238 assisted housing who enters into a written agreement to take such actions as the department
239 determines are necessary to preserve affordability of the affected publicly assisted housing,
240 provided that the owner has received a certification from the department that the owner has
241 satisfied the requirements of this section.

242 SECTION 6. Department Certifications

243 (a) Certificate of Exemption.

244 An owner who seeks an exemption pursuant to Section 5 shall apply to the department
245 for a certificate of exemption by submitting a written request for said certificate in the form and
246 with such documentation as is deemed necessary by the department to establish the owner's
247 exemption to the satisfaction of the department. The department shall give written notice of the
248 owner's request to all persons and entities entitled to notice of termination under Section 2 and
249 shall provide such persons and entities a reasonable period of time to respond to the owner's
250 request. The department may conduct a public hearing to determine whether the owner has
251 committed to take actions necessary to preserve affordability of the publicly assisted housing
252 and the department shall expeditiously issue a written decision granting or denying the owner's
253 request.

254 (b) Certificate of Compliance.

255 An owner who has complied with the provisions of sections 2 and 3, which has not
256 resulted in a purchase by a municipality or its designee, may apply to the department for a
257 certificate of compliance by submitting a written request for said certificate in the form and with
258 such documentation as is deemed necessary by the department to establish the owner's
259 compliance to the satisfaction of the department. The department shall give written notice of

260 the owner's request to all persons and entities entitled to notice of termination under Section 2
261 and shall provide such persons and entities a reasonable period of time to respond to the
262 owner's request. The department may conduct such hearings as it deems necessary to determine
263 whether the owner has complied with the provisions of Sections 2 and 3 and shall issue a
264 written decision granting or denying the owner's request. The department shall issue a
265 certificate of compliance if it determines that the owner has complied with the provisions of
266 Sections 2 and 3. Upon issuance, the certificate of compliance may be filed for record or
267 registration, as the case may be, within one year after its date.

268 SECTION 7. Protections for Existing Tenants

269 In the event of a termination, if any low income tenant in good standing under the
270 terms of his or her lease in a unit in a publicly assisted housing development with affordability
271 restrictions, involuntarily vacates such unit or is forced to pay rent in excess of the amount of
272 rent that the tenant was obligated to pay at the time of the termination, then the owner shall:-
273 (a) locate, and pay the cost of relocating to, a comparable affordable unit or (b) pay the tenant,
274 for a period of five years, the difference between the actual rent the tenant is required to pay
275 and the greater of (i) the amount of rent the tenant was required to pay at the time of the
276 termination or (ii) 30 percent of household income of the tenant.

277 SECTION 8. Enforcement.

278 The attorney general of the commonwealth, the affected municipality or its designee, or
279 one or more tenants of or applicants to the publicly assisted housing, may bring a civil action for
280 injunctive relief and damages against an owner, or any of its successors or assigns, who has
281 violated this chapter. An owner found to have violated any provision of this chapter shall, in
282 addition to any other damages, pay a civil penalty to each tenant in the publicly assisted housing

283 in the amount of \$500 per individual tenant, and shall also pay the attorney's fees and costs
284 incurred in bringing the action.

285 SECTION 9. Regulations

286 The Department shall promulgate regulations to effectuate the purposes of this chapter
287 within 60 days of its enactment, which purposes are (a) to authorize municipalities to prevent
288 the loss of publicly assisted housing by providing them with the opportunity to preserve
289 affordability of such housing; (b) to preserve affordability of such housing for low-income
290 tenants and applicants to the greatest extent feasible, for the longest possible periods of time and
291 at levels of affordability making such housing available especially to very low-income and
292 extremely low-income tenants and applicants to the greatest extent feasible; (c) to protect
293 tenants of such housing from displacement due to the loss of the use restrictions; (d) to avoid
294 exacerbating the existing shortage of housing affordable to low-income persons in
295 Massachusetts, especially very low-income and extremely low-income persons, by preventing
296 the loss of publicly assisted housing; (e) to address the overall lack of housing affordable to low
297 income persons in Massachusetts; (f) to preserve federally-funded project-based subsidies to the
298 greatest extent possible, particularly subsidies such as project-based rental assistance or
299 mortgage subsidies which make housing available to very low and extremely low-income
300 households; (g) to provide for a speedy and accurate determination of an owner's compliance
301 with this chapter or exemption from certain requirements of this chapter with respect to a
302 particular proposed termination; (h) to provide oversight of the exercise of municipalities' right
303 to purchase publicly assisted housing in the event of a proposed termination, with due regard to
304 the rights and interests of all parties; and (i) to provide ongoing oversight of publicly assisted
305 housing in which the owner has committed to preserving affordability.